IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:06CV315-03-MU

FABIAN TOBIAS EVANS,)	
Plaintiff,)	
V.)	ORDER
CHARLES SPEILMAN,)	
Defendant.)))	

THIS MATTER comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. §§ 1983 and 1985, filed August 1, 2006. (Document No. 1.) Upon careful consideration by the Court, for the reasons set forth herein, the Plaintiff's Complaint will be dismissed.

Plaintiff Complaint, filed as a § 1983 claim, essentially contains an allegation of assault¹ against him by Defendant Mr. Charles Speilman. Plaintiff alleges that the Defendant pulled up along side him while he was driving his car and shot the Plaintiff.

A case filed under 42 U.S.C. § 1983 requires a deprivation of a right secured by the Constitution by a person acting under color of state law. According to Plaintiff's Complaint, the Defendant, Mr. Charles Spielman owns a air conditioning company. Defendant pulled up along side of Plaintiff while he was driving and shot the Plaintiff. Defendant does not qualify as a state actor and therefore cannot be sued under 42 U.S.C. § 1983. Thus, this Complaint cannot be maintained against the Defendant pursuant to 42 U.S.C. § 1983.

Additionally, Plaintiff has failed to state a claim under 42 U.S.C. § 1985. To state a claim

¹ Under the circumstances of this case as described by Plaintiff in his Complaint, federal court is not the forum to which to bring this civil assault case.

under 42 U.S.C. § 1985 there must be some racial, or other class-based invidiously discriminatory

animus behind the alleged conspirators' action. Gedrich v. Fairfax County Dept. Of Family

Services, 282 F. Supp 2d 439 (E.D. Va 2003). Here, Plaintiff cannot establish a conspiracy as he

has only named one Defendant and his Complaint contains no allegations of racial or other class-

based discriminatory animus behind the Defendant's actions. Therefore, Plaintiff's Complaint

cannot be maintained against the Defendant pursuant to 42 U.S.C. § 1985.

Based upon the foregoing, the instant Complaint is hereby **DISMISSED** for failure to state

a claim upon which relief can be granted.

SO ORDERED.

Signed: August 3, 2006

Graham C. Mullen

United States District Judge